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SENATE BILL 448

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO CONSUMER CREDIT; PROVIDING FOR A SECURITY FREEZE ON  
THE RELEASE OF CONSUMER CREDIT INFORMATION; ENACTING THE CREDIT  
REPORT SECURITY ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Credit Report Security Act".

Section 2. DEFINITIONS.--As used in the Credit Report  
Security Act:

A. "consumer" means an individual who is a resident  
of New Mexico;

B. "consumer reporting agency" means any person  
that, for monetary fees, dues or on a cooperative nonprofit  
basis, regularly engages in the practice of assembling or  
evaluating consumer credit information or other information on

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1 consumers for the purpose of furnishing credit reports to third  
2 parties;

3 C. "credit report" means a written, oral or other  
4 communication of information by a consumer reporting agency  
5 bearing on a consumer's credit worthiness, credit standing,  
6 credit capacity, character, general reputation, personal  
7 characteristics or mode of living that is used or expected to  
8 be used or collected for the purpose of serving as a factor in  
9 establishing the consumer's eligibility for credit, insurance,  
10 investment, benefit, employment or other purpose as authorized  
11 by the federal Fair Credit Reporting Act, 15 U.S.C. Section  
12 1681a;

13 D. "person" means an individual, corporation, firm,  
14 association, organization, trust, estate, cooperative,  
15 business, partnership, limited liability company, joint  
16 venture, governmental agency or subdivision or any legal or  
17 commercial entity; and

18 E. "security freeze" means a notice, at the request  
19 of a consumer and subject to certain exceptions, that prohibits  
20 a consumer reporting agency from releasing any part of the  
21 consumer's credit report or any information derived from the  
22 consumer's credit report without the express authorization of  
23 the consumer.

24 Section 3. SECURITY FREEZE.--

25 A. A consumer may elect to place a security freeze

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1 on the consumer's credit report by making a request to a  
2 consumer reporting agency by means of certified or regular  
3 mail, by telephone or through a secure electronic method  
4 provided by the agency. A consumer shall provide any personal  
5 identification required by the consumer reporting agency and  
6 pay a fee, if applicable.

7 B. A consumer reporting agency shall place a  
8 security freeze on a consumer's credit report no later than  
9 five business days after receiving a request from the consumer.  
10 As of July 1, 2008, a consumer reporting agency shall place a  
11 security freeze on a consumer's credit report no later than  
12 three business days after receiving a request from the  
13 consumer. As of July 1, 2009, a consumer reporting agency  
14 shall place a security freeze on a consumer's credit report no  
15 later than one business day after receiving a request from the  
16 consumer.

17 C. On the same day that a consumer reporting agency  
18 places a security freeze on a consumer's credit report, it  
19 shall:

20 (1) send a written confirmation of the  
21 security freeze to the consumer; and

22 (2) provide the consumer with a unique  
23 personal identification number or password to be used by the  
24 consumer when providing authorization for the release of the  
25 consumer's credit report to a specific person or for a specific

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1 period of time or for permanent removal of the freeze.

2 D. While a security freeze is in effect, a consumer  
3 may authorize a consumer reporting agency to release the  
4 consumer's credit report to a specific person or to release the  
5 credit report for a specific period of time by contacting the  
6 consumer reporting agency by regular or certified mail, by  
7 telephone or by a secure electronic method and providing:

8 (1) proper identification;

9 (2) the unique personal identification number  
10 or password; and

11 (3) information regarding the party that is to  
12 have access to the credit report or the time period during  
13 which the credit report can be released.

14 E. A consumer reporting agency that receives a  
15 request pursuant to Subsection D of this section shall release  
16 a consumer's credit report as requested by the consumer no  
17 later than three business days after receiving the request. As  
18 of July 1, 2008, a consumer reporting agency shall comply with  
19 the request no later than one business day after receiving the  
20 request. As of July 1, 2009, a consumer reporting agency shall  
21 comply with the request within fifteen minutes of receiving  
22 such a request by secure electronic mail or telephone.

23 F. If a third party requests access to a credit  
24 report on which a security freeze is in effect for the purpose  
25 of receiving, extending or otherwise using the credit in that

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1 report, the consumer reporting agency shall notify the consumer  
2 that an attempt was made to access the consumer's credit  
3 report.

4 G. If a consumer reporting agency releases  
5 information on a credit report while a security freeze is in  
6 effect and without a consumer's authorization, it shall notify  
7 the consumer within five business days of the release of  
8 information, including the specific information released and  
9 the third party to whom it has been released.

10 H. A security freeze shall remain in place until a  
11 consumer requests its removal. A consumer reporting agency  
12 shall remove the security freeze within three business days  
13 after receiving a request from a consumer who provides the  
14 unique personal identification number or password and proper  
15 identification.

16 I. A consumer reporting agency may charge a  
17 consumer a fee of no more than five dollars (\$5.00) for the  
18 initial placement of a security freeze but shall not charge a  
19 fee for the release of a credit report to a person, for the  
20 release of a credit report for a specific period of time or for  
21 the removal of the freeze. A fee shall not be charged to a  
22 victim of identity theft who provides a valid police or  
23 investigative report filed with a law enforcement agency.

24 J. If a consumer's credit report was frozen due to  
25 a material misrepresentation of fact by the consumer and a

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1 consumer reporting agency intends to remove the freeze, the  
2 consumer reporting agency shall notify the consumer in writing  
3 five business days prior to removing the security freeze on the  
4 consumer's credit report.

5 K. A consumer reporting agency may advise a third  
6 party that a security freeze is in effect with respect to a  
7 consumer's credit report. A consumer reporting agency shall  
8 not suggest or otherwise state or imply to a third party that  
9 the security freeze reflects a negative credit score, history,  
10 report or rating.

11 L. The provisions of this section do not prevent a  
12 consumer reporting agency from providing information to:

13 (1) a person that has a current debtor-  
14 creditor relationship with the consumer;

15 (2) a person acting pursuant to a court order,  
16 warrant or subpoena;

17 (3) the child support enforcement division of  
18 the human services department for the purpose of carrying out  
19 its statutory duties of establishing and collecting child  
20 support obligations; or

21 (4) a governmental agency acting to  
22 investigate fraud, to investigate or collect delinquent taxes  
23 or unpaid court orders or to fulfill any of its other statutory  
24 duties.

25 Section 4. NOTICE OF RIGHTS.--At any time that a consumer  
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1 reporting agency is required to provide the consumer with a  
2 summary of rights pursuant to Section 609 of the federal Fair  
3 Credit Reporting Act, the following notice shall be included:

4 "New Mexico Consumers Have the  
5 Right to Obtain a Security Freeze

6 You may obtain a security freeze on your credit  
7 report to protect your privacy and ensure that  
8 credit is not granted in your name without your  
9 knowledge. You have a right to place a security  
10 freeze on your credit report pursuant to the Credit  
11 Report Security Act.

12 The security freeze will prohibit a consumer  
13 reporting agency from releasing any information in  
14 your credit report without your express  
15 authorization or approval.

16 The security freeze is designed to prevent  
17 credit, loans and services from being approved in  
18 your name without your consent. When you place a  
19 security freeze on your credit report, within five  
20 business days, you will be provided with a personal  
21 identification number or password to use if you  
22 choose to remove the freeze on your credit report or  
23 to temporarily authorize the release of your credit  
24 report to a specific party or parties or for a  
25 specific period of time after the freeze is in

1 place. To remove the freeze or to provide  
2 authorization for the temporary release of your  
3 credit report, you must contact the consumer  
4 reporting agency and provide all of the following:

5 (1) the unique personal identification  
6 number or password provided by the consumer  
7 reporting agency;

8 (2) proper identification to verify your  
9 identity; and

10 (3) information regarding the third  
11 party or parties who are to receive the credit  
12 report or the period of time for which the credit  
13 report may be released to users of the credit  
14 report.

15 A consumer reporting agency that receives a  
16 request from a consumer to lift temporarily a freeze  
17 on a credit report shall comply with the request no  
18 later than three business days after receiving the  
19 request; as of July 1, 2008, a consumer reporting  
20 agency shall comply with the request no later than  
21 one business day after receiving the request; and as  
22 of July 1, 2009, a consumer reporting agency shall  
23 comply with the request within fifteen minutes of  
24 receiving the request by telephone or secure  
25 electronic mail.

1           A security freeze does not apply to  
2           circumstances where you have an existing account  
3           relationship and a copy of your credit report is  
4           requested by your existing creditor or its agents  
5           for certain types of account review, collection,  
6           fraud control or similar activities.

7           If you are actively seeking a new credit, loan,  
8           utility, telephone or insurance account, you should  
9           understand that the procedures involved in lifting a  
10          security freeze may slow your own applications for  
11          credit. You should plan ahead and lift a freeze,  
12          either completely if you are shopping around or  
13          specifically for a certain creditor, with enough  
14          advance notice before you apply for new credit for  
15          the lifting to take effect. Until July 1, 2008, you  
16          should lift the freeze at least three business days  
17          before applying; between July 1, 2008 and July 1,  
18          2009, you should lift the freeze at least one  
19          business day before applying; and after July 1,  
20          2009, if you make your request by telephone or  
21          electronic mail, you should lift the freeze at least  
22          fifteen minutes before applying for a new account.  
23          You have a right to bring a civil action against a  
24          consumer reporting agency that violates your rights  
25          under the Credit Report Security Act."

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1           Section 5. VIOLATION OF SECURITY FREEZE--CIVIL  
2 LIABILITY.--If a consumer reporting agency releases information  
3 placed under a security freeze in violation of the provisions  
4 of Section 3 of the Credit Report Security Act, the affected  
5 consumer may bring a civil action against the consumer  
6 reporting agency for:

7           A. injunctive relief to prevent further violation  
8 of the security freeze;

9           B. any actual damages sustained by the consumer as  
10 a result of the violation;

11           C. a civil penalty in an amount not to exceed two  
12 thousand dollars (\$2,000) for each violation of the security  
13 freeze; and

14           D. costs of the action and reasonable attorney  
15 fees.

16           Section 6. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2007.